



# *COMMONWEALTH of VIRGINIA*

## *DEPARTMENT OF ENVIRONMENTAL QUALITY*

PIEDMONT REGIONAL OFFICE

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Molly Joseph Ward  
Secretary of Natural Resources

David K. Paylor  
Director

Michael P. Murphy  
Regional Director

**STATE WATER CONTROL BOARD  
ENFORCEMENT ACTION - ORDER BY CONSENT  
ISSUED TO  
THE TOWN OF KILMARNOCK  
FOR  
THE TOWN OF KILMARNOCK WASTEWATER TREATMENT PLANT  
VPDES Permit No. VA0020788**

### **SECTION A: Purpose**

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and the Town of Kilmarnock, regarding the Town of Kilmarnock Waste Water Treatment Plant, for the purpose of resolving certain violations of the State Water Control Law and the applicable permit and regulation.

### **SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "305(b) report" means the report required by Section 305(b) of the Clean Water Act (33 United States Code § 1315(b)), and Va. Code § 62.1-44.19:5 for providing Congress and the public an accurate and comprehensive assessment of the quality of State surface waters.
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.

4. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
5. "Discharge" means discharge of a pollutant. 9 VAC 25-31-10
6. "Discharge of a pollutant" when used with reference to the requirements of the VPDES permit program means:
  - a. Any addition of any pollutant or combination of pollutants to surface waters from any point source; or
  - b. Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.
7. "DMR" means Discharge Monitoring Report.
8. "Effluent" means wastewater – treated or untreated – that flows out of a treatment plant, sewer, or industrial outfall.
9. "EPA" means Environmental Protection Agency.
10. "Facility" or "Plant" means the Town of Kilmarnock Waste Water Treatment Plant located at 817 Waverly Avenue, Kilmarnock, Virginia, which treats and discharges treated sewage and other municipal wastes, for the residents and businesses of Town of Kilmarnock.
11. "Kilmarnock" means the Town of Kilmarnock, a political subdivision of the Commonwealth of Virginia. Kilmarnock is a "person" within the meaning of Va. Code § 62.1-44.3.
12. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
13. "O&M" means operations and maintenance.
14. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
15. "Permit" means VPDES Permit No. VA0020788, which was issued under the State Water Control Law and the Regulation to Kilmarnock on November 1, 2011, and which expires on October 31, 2016.
16. "Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials,

radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 USC § 2011 *et seq.*)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water... 9 VAC 25-31-10.

17. "Pollution" means such alteration of the physical, chemical, or biological properties of any state waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental or injurious to the public health, safety, or welfare or to the health of animals, fish, or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (i) an alteration of the physical, chemical, or biological property of state waters or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution but which, in combination with such alteration of or discharge or deposit to state waters by other owners, is sufficient to cause pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly established by the Board, are "pollution." Va. Code § 62.1-44.3.
18. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.
19. "Regulation" means the VPDES Permit Regulation, 9 VAC 25-31-10 *et seq.*
20. "SAV" means submerged aquatic vegetation.
21. "SOP" means standard operating procedures.
22. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
23. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3.
24. "TKN" means total kjeldahl nitrogen.
25. "TMDL" means total maximum daily load.
26. "Va. Code" means the Code of Virginia (1950), as amended.
27. "VAC" means the Virginia Administrative Code.
28. "VPDES" means Virginia Pollutant Discharge Elimination System.
29. "WLA" means waste load allocation.



### **SECTION C: Findings of Fact and Conclusions of Law**

1. Kilmarnock owns and operates the Facility in Lancaster County, Virginia. The Permit allows Kilmarnock to discharge treated sewage and other municipal wastes from the Plant, to an unnamed tributary of Indian Creek, in strict compliance with the terms and conditions of the Permit.
2. The unnamed tributary of Indian Creek is located in the Chesapeake Bay Basin. During the 2012 305(b)/303(d) Integrated Water Quality Assessment, the unnamed tributary was not assessed for any designated use. It was addressed in the Indian, Tabbs, Dymmer, and Antipoison Creeks Bacterial TMDL, which was approved by the EPA on April 8, 2009 and by the Board on July 27, 2009. The TMDL was subsequently modified. The Facility received a fecal coliform and an enterococci WLA. The Kilmarnock WWTP was also included in the Chesapeake Bay TMDL, which was approved by the EPA on December 29, 2010. The TMDL addresses dissolved oxygen and SAV impairments in the Chesapeake Bay and its tidal tributaries by allocating total nitrogen, total phosphorus, and total suspended solids to point and nonpoint sources, as well as atmospheric deposition and natural sources, throughout the Bay watershed. The discharge is considered a significant nutrient discharger and received individual wasteload allocations. The unnamed tributary is intermittent and is therefore considered a Tier 1 water.
3. A review of DMRs submitted by Kilmarnock for the October 2013 through February 2014 monitoring periods indicates the following Permit effluent limit exceedances: ammonia in October and December of 2013 and January and February of 2014; total phosphorus in December 2013; TKN in January and February 2014; and, *Enterococci* in January 2014. Kilmarnock indicated that it believed the exceedances were related to multiple equipment malfunctions combined with cold weather.
4. On March 25, 2014, the Department issued an NOV to the Town of Kilmarnock, citing it for the above Permit effluent violations which occurred between October 1, 2013 and February 28, 2014. In addition a review of Kilmarnock's recent DMRs indicates the Facility failed to meet ammonia and TKN during the March 2014 monitoring period, and ammonia and *Enterococci* during the March 2014 monitoring period.
5. The Department met with Kilmarnock on April 23, 2014, to discuss the NOV and the effluent violations. The Town attributed the violations to process problems caused by equipment failure and the cold weather experienced in January and February of 2014. Kilmarnock submitted documentation indicating repairs had been completed on the return activated sludge (RAS) pumps, the clarifier scraper, the alum feed pump, and the RAS pump suction line. Kilmarnock installed 2 Schreiber Biological Nutrient Removal (BNR)

- reactors in 1997 and Kilmarnock staff mentioned that they can operate the BNR units effectively in all but the most extreme conditions.
6. Kilmarnock's operating logs indicate that it discharged treated wastewater from the Plant every day from October 1, 2013 through May 1, 2014.
  7. Va. Code § 62.1-44.5 states that: "[E]xcept in compliance with a certificate issued by the Board, it shall be unlawful for any person to discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances."
  8. The Regulation, at 9 VAC 25-31-50, also states that except in compliance with a VPDES permit, or another permit issued by the Board, it is unlawful to discharge into state waters sewage, industrial wastes or other wastes.
  9. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a "certificate" under the statute.
  10. The Department has issued no permits or certificates to Kilmarnock other than VPDES Permit No. VA0020788.
  11. The unnamed tributary of Indian Creek is a surface water located wholly within the Commonwealth and is a "state water" under State Water Control Law.
  12. Based on the review of DMRs submitted by Kilmarnock and the April 23, 2014, meeting, the Board concludes that Kilmarnock has violated the Permit and Va. Code 62.1-44.5 and 9 VAC 25-31-50, by discharging treated sewage and municipal wastes from the Plant while concurrently failing to comply with the conditions of the Permit, as described above.
  13. In order for Kilmarnock to return to compliance, DEQ staff and representatives of Kilmarnock have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

#### **SECTION D: Agreement and Order**

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders Kilmarnock, and Kilmarnock agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of \$5,513 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:



Receipts Control  
Department of Environmental Quality  
Post Office Box 1104  
Richmond, Virginia 23218

Kilmarnock shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, Kilmarnock shall be liable for attorneys' fees of 30% of the amount outstanding.

#### **SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend this Order with the consent of Kilmarnock for good cause shown by Kilmarnock, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the Facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, Kilmarnock admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Kilmarnock consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Kilmarnock declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by Kilmarnock to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of

appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.

7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Kilmarnock shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. Kilmarnock shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Kilmarnock shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
  - a. the reasons for the delay or noncompliance;
  - b. the projected duration of any such delay or noncompliance;
  - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
  - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Kilmarnock. Nevertheless, Kilmarnock agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
  - a. The Director or his designee terminates the Order after Kilmarnock has completed all of the requirements of the Order;

- b. Kilmarnock petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
- c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Kilmarnock.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Kilmarnock from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

- 12. Any plans, reports, schedules or specifications attached hereto or submitted by Kilmarnock and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
- 13. The undersigned representative of Kilmarnock certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Kilmarnock to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Kilmarnock.
- 14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
- 15. By its signature below, Kilmarnock voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 7<sup>th</sup> day of NOVEMBER, 2014.



Michael P. Murphy, Regional Director  
Department of Environmental Quality

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The Town of Kilmarnock voluntarily agrees to the issuance of this Order.

Date: Sept. 16, 2014 By: Thomas P. Int. Town Manager  
(Person) (Title)  
Town of Kilmarnock

Commonwealth of Virginia

City/County of Lancaster

The foregoing document was signed and acknowledged before me this 16 day of

September, 2014, by Thomas Saunders who is

Town Manager of the Town of Kilmarnock, on behalf of the Town.



Cynthia L. Balderon  
Notary Public

7508868  
Registration No.

My commission expires: 12-31-15

Notary seal:

## APPENDIX A SCHEDULE OF COMPLIANCE

Kilmarnock shall:

1. Within 60 days of the issuance of this Order, submit to the Department for review, a diagnostic evaluation of the Facility with a corrective action plan (CAP) and implementation schedule designed to ensure compliance with VPDES Permit effluent limits. Once approved by the Department, the CAP must be implemented by Kilmarnock in accordance with the implementation schedule. Compliance with Permit limits must be achieved no later than February 1, 2015.
2. The DEQ and Kilmarnock acknowledge that during the term of operational adjustment or upgrade authorized by this Order that Kilmarnock may experience additional violations of permit effluent limitations for ammonia, and TKN. Therefore, Kilmarnock will operate and maintain the Facility in a workmanlike manner, in order to ensure that the Facility produces the best quality effluent of which it is capable.
3. DEQ Contact

Unless otherwise specified in this Order, Kilmarnock shall submit all requirements of Appendix A of this Order to:

**Frank Lupini**  
**Enforcement Specialist**  
**VA DEQ –Piedmont Regional Office**  
**4949A Cox Road,**  
**Glen Allen, Virginia 23060**  
**Frank.Lupini@deq.virginia.gov**